

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

All Cases Not Designated In
Paragraphs 2 or 3 of CMO-1

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**ORDER SETTING PROCEDURE FOR SHORT FORM AMENDMENT
OF COMPLAINTS AND INCORPORATION BY REFERENCE OF
MATERIALS UNDER SEAL**

1. This Court's July 13, 2018, Order requires plaintiffs not designated in paragraphs 2 or 3 of CMO-1 to review the relevant ARCOS data for their county and amend their complaints to add or dismiss defendants. (Dkt. #739) Because the ARCOS data has been deemed confidential, the need for such amendments would likely result in hundreds of filings under seal. In addition, several of the allegations set forth in the Track One complaints which plaintiffs may elect to include in their amended pleadings also contain confidential information. To avoid wasting resources unnecessarily, the Court hereby adopts the following Short Form Amendment procedure, thereby obviating the need for filing such amendments under seal.

2. This procedure will enable plaintiffs with MDL cases, other than those identified in CMO 1, if they choose, to: 1) add or dismiss defendants, without prejudice, and without specific reference to confidential material but rather based on averment of plaintiffs' review of the ARCOS data; and 2) incorporate by reference the common

factual allegations and RICO claims set forth in the pleadings in *County of Summit, Ohio* case number 1:18-op-45090, both as pleaded in the Corrected Second Amended Complaint (see docket nos. 513, 514), and as may be amended in the future (“*Summit County* pleadings”), such that no confidential material will be contained in the Short Form filing.

3. Each plaintiff electing to amend its complaint may use this Short Form that does the following: identifies the defendants sued by the plaintiff(s); states that counsel has selected defendants after review of the ARCOS data pursuant to the procedure approved by the Court; incorporates by reference the common facts and/or RICO claims alleged in the *Summit County* pleadings; incorporates by reference the pleadings in the plaintiff(s)’ existing complaint at the time that said plaintiff files the Short Form; and, supplements rather than supersedes the plaintiff(s)’ prior pleadings except as specified herein. In the Short Form, plaintiff(s) may state that their existing complaint and the *Summit County* pleadings are incorporated by reference and that statement will be effective as if those allegations, including material under seal, were fully set forth therein.

4. The Court approves of the Short Form attached as Exhibit “A” hereto for these purposes.

5. The Short Form does not purport to outline all of the causes of action that may be asserted and operates only as a supplement to the previously-filed complaints. The Short Form may not be used as the initial complaint in newly filed cases.

6. The Short Form does not displace or supersede the prior pleadings *except* to the extent that: 1) the set of defendants named by plaintiff is altered by the filing of a

Short Form; and 2) if the existing complaint contained RICO claims, any RICO claims added through the Short Form will supersede those previously asserted. Where a plaintiff has named a defendant in an existing complaint, and thereafter files a Short Form that does not identify said defendant, that defendant is deemed to be dismissed without prejudice in that plaintiff's case. Where plaintiff(s) identify a defendant for the first time in the Short Form, Plaintiff(s) must add the necessary allegations, including jurisdictional facts, where indicated in the Short Form.

7. If a plaintiff elects to amend its previously filed complaint by use of the Short Form, the plaintiff shall have the option of filing this form as an "amended complaint" via the Court's CM/ECF system in the individual docket established for the case. In such cases, plaintiff shall not pay any additional court fees, having paid the filing fee on submission of the original complaint.

IT IS ORDERED.

DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: _____, 2018

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISIONIN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**SHORT FORM FOR SUPPLEMENTING
COMPLAINT AND AMENDING
DEFENDANTS AND JURY DEMAND**

Plaintiff submits this supplemental pleading and Amended Complaint incorporating as if fully set forth herein its own prior pleadings and, if indicated below, the common factual allegations identified and the RICO causes of action included in the Corrected Second Amended Complaint and Jury Demand in the case of *The County of Summit, Ohio, et al., v. Purdue Pharma L.P., et al.*, Case No. 1:18-op-45090 (“*Summit County Pleadings*”), *In Re National Prescription Opiate Litigation*, in the United States District Court for the Northern District of Ohio (Dkt #513, 514¹), and as may be amended in the future, and any additional claims asserted herein. Plaintiff also hereby amends its complaint to alter the defendants against which claims are asserted as identified below. To the extent defendants were previously sued in plaintiff(s)’ existing complaint and they

¹ Docket #513 is the redacted Summit Second Amended Complaint and Docket #514 is the unredacted Summit Corrected Second Amended Complaint filed under seal in Case No. 1:17-md-02804-DAP. The redacted Summit Corrected Second Amended Complaint is also filed in its individual docket, Case No. 1:18-op-45090-DAP, Docket #24.

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OF COMPLAINTS AND INCORPORATION BY REFERENCE OF MATERIALS UNDER
SEAL – Page 2**

are no longer identified as defendants herein, they have been dismissed without prejudice.

INCORPORATION BY REFERENCE OF EXISTING COMPLAINT

1. Plaintiff(s)' Existing Complaint (No. ____-CV-____, Dkt. #__) is expressly incorporated by reference to this Short Form as if fully set forth herein except to the extent that allegations regarding certain defendants that are not listed in section 2 below are dismissed without prejudice.

PARTIES – DEFENDANTS

2. Having reviewed the relevant ARCOS data, Plaintiff asserts claims against the following Defendants:

[List all Defendants against which claims are asserted. To the extent a claim is not asserted against a particular defendant, so indicate below. Otherwise each claim will be deemed to be asserted against all Defendants (except for the RICO claims identified below). If Defendants have not been sued previously in Plaintiff(s)' Existing Complaint, Plaintiff must include separate factual allegations below in support of each new defendant.]

I, _____, Counsel for Plaintiff(s), certify that in identifying all Defendants, I have followed the procedure approved by the Court and reviewed the ARCOS data that I understand to be relevant to Plaintiff(s).

Dated: _____ Signed: _____

Factual Allegations Regarding Individual Defendants

2.1 _____

2.2 _____

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COMMON FACTUAL ALLEGATIONS

3. By checking the boxes in this section, Plaintiff hereby incorporates by reference to this document the common factual allegations set forth in the *Summit County* Pleadings as identified in the Court’s Order implementing the Short Form procedure. (Dkt. # ____).

- ☐ Common Factual Allegations (Paragraphs 130 through 670 and 746 through 813)
- ☐ RICO Marketing Enterprise Common Factual Allegations (Paragraphs 814-848)
- ☐ RICO Supply Chain Enterprise Common Factual Allegations (Paragraphs 849-877)

4. If additional claims are alleged below that were not pled in Plaintiff’s Existing Complaint (other than the RICO claims asserted herein), the facts supporting those allegations must be pleaded here. Plaintiff(s) assert(s) the following additional facts to support the claim(s) identified in Paragraph 6 below (below or attached):

CLAIMS

5. The following federal **RICO causes of action** asserted in the *Summit County* Pleadings as identified in the Court’s implementing order and any subsequent amendments (Dkt. __), are incorporated in this Short Form by reference, in addition to the causes of action already asserted in the Plaintiff(s)’s Existing Complaint (check all that apply):

- ☐ First Claim for Relief – Violation of RICO, 18 U.S.C. § 1961 *et seq.* – Opioid Marketing Enterprise (Against Defendants Purdue, Cephalon, Janssen, Endo and Mallinckrodt (the “RICO Marketing Defendants”)) (*Summit County* Pleadings, Paragraphs 878-905)
- ☐ Second Claim for Relief – Violation of RICO, 18 U.S.C. § 1961 *et seq.* – Opioid Supply Chain Enterprise (Against Defendants Purdue, Cephalon, Endo, Mallinckrodt, Actavis, McKesson, Cardinal, and AmerisourceBergen (the “RICO Supply Chain Defendants”)) (*Summit County* Pleadings, Paragraphs 906-938)

6. Plaintiff asserts the following **additional claims** as indicated (below or attached):

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7. To the extent Plaintiff(s) wish(es) to **dismiss claims** previously asserted in Plaintiff(s)'s Existing Complaint, they are identified below and will be dismissed without prejudice.

WHEREFORE, Plaintiff(s) prays for relief as set forth in the *Summit County* Pleadings in *In Re National Prescription Opiate Litigation* in the United States District Court for the Northern District of Ohio, MDL No. 2804 and in Plaintiff's Existing Complaint as has been amended herein.

Dated: _____

Attorney for Plaintiff(s)